

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

NOVEMBER 1998 SESSION

<p>FILED</p> <p>December 21, 1998</p> <p>Cecil W. Crowson Appellate Court Clerk</p>
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<p>STATE OF TENNESSEE,</p> <p>Appellee,</p> <p>V.</p> <p>CARLOS DEWAYNE PARKER,</p> <p>Appellant.</p>	<p>)</p> <p>) C.C.A. No. 01C01-9712-CC-00574</p> <p>)</p> <p>) Cheatham County</p> <p>)</p> <p>) Honorable Robert E. Burch, Judge</p> <p>)</p> <p>) (Aggravated Sexual Battery)</p> <p>)</p> <p>)</p>
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FOR THE APPELLANT:

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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

OPINION

The appellant, Carlos Dewayne Parker, was indicted by the Cheatham County Grand Jury for various sexual offenses including rape, rape of a child, sexual battery, aggravated sexual battery, and incest. He entered negotiated pleas of nolo contendere to one count each of rape, see T.C.A. § 39-13-503, and aggravated sexual battery, see T.C.A. § 39-13-504. Pursuant to his plea agreement, he received concurrent eight-year sentences for each offense. At a hearing to determine the manner of service of these sentences, the trial court concluded that the appellant was eligible for community corrections under the “special needs” provision of T.C.A. § 40-36-106(c). However, after reviewing the statutory sentencing considerations, see T.C.A. § 40-35-103, and arguments of counsel, the trial court ordered confinement with the Tennessee Department of Correction.

The appellant argues that the trial court abused its discretion in denying a sentence to community corrections. We find that the appellant is ineligible for community corrections and affirm the judgment of the trial court.

To be eligible for consideration of a sentence to community corrections, an offender must meet the requirements of T.C.A § 40-36-106. Subsection (a) of that statute lists the general eligibility criteria and disqualifies persons who, like the appellant, are convicted of “crimes against the person as provided in title 39, chapter 13, parts 1-5.” T.C.A. § 40-36-106(a)(2).

Neither is the appellant eligible under the “special needs” provision of subsection (c). See T.C.A. § 40-36-106(c). “Before an offender may be sentenced pursuant to subsection (c), the offender must be found eligible for probation.” State v. Grigsby, 957 S.W.2d 541, 546 (Tenn. Crim. App. 1997) (citing State v. Staten, 787 S.W.2d 934, 936 (Tenn. Crim. App. 1989)); see State v. Boston, 938 S.W.2d 435, 438 (Tenn. Ct. App. 1996). The appellant is not eligible for probation. See T.C.A. § 40-35-303 (“a defendant shall not be eligible for probation under the provisions of this chapter if the defendant is convicted of a violation of . . . § 39-13-504”). Therefore, he is not eligible for community corrections.

Because we find that the appellant is ineligible for consideration of a sentence to community corrections, we need not directly address the appellant’s argument that the trial court abused its discretion in ordering confinement.

The judgment of the trial court is affirmed.

PAUL G. SUMMERS, Judge

CONCUR:

JOE G. RILEY, Judge

L. T. LAFFERTY, Senior Judge